

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:

CHAPTER 7

THOMAS S. AVERY
DEBRA A. AVERY

CASE NO. 12-17309

Debtors

JUDGE JESSICA E. PRICE SMITH

**TRUSTEE'S MOTION TO DETERMINE PROPERTY OF THE ESTATE AND
FOR TURNOVER OF PROPERTY TO THE TRUSTEE**

Now comes Waldemar J. Wojcik, the duly appointed and acting Trustee in the within proceedings, by and through counsel, and respectfully moves this Honorable Court to enter an Order finding and determining property of this Bankruptcy Estate under 11 U.S.C. §541(a)(5)(a) and should be turned over to the undersigned Trustee for distribution to creditors. In support of his Motion, Trustee says as follows:

Prior to commencement of this case, the Debtors herein owned and operated Ta Da Pizza, LLC under the trade name Paisano's Pizza at 6230 Stumph Rd., Cleveland, Ohio. The Debtors were the sole members of that LLC. By 12/12/2011, the Debtors terminated all business operations and sold their interest therein to Cynjen Creations, LLC for \$40,000.00. Pursuant to the attached Conditional Bill of Sale and Cognovit Note dated 12/12/2011, the Debtors were entitled to receive \$40,000.00 from the Buyer.

As of the Petition filing date, the Debtors represented that \$38,000.00 remained due and owing upon this obligation. Inasmuch as an LLC is a pass through entity and since this entity was solely owned by the Debtors herein and was liquidated pre-Petition, the Debtors individually are entitled to these payments. Consequently, the balance due in connection with this sale is property of this Bankruptcy Estate under 11 U.S.C. §541, subject only to available exemptions.

For all of the foregoing reasons, the undersigned Trustee respectfully moves this Court to find and declare, as follows: 1) that the \$38,000.00 due and owing under the aforesaid Conditional Bill and Sale and Cognovit Note as of the Petition filing date, is property of this Bankruptcy Estate pursuant to 11 U.S.C. §541(a)(5)(A), subject only to available exemptions; and 2) to enter an Order providing that all such funds to which Debtors may be entitled to so receive should be turned over to this Trustee for

administration; and 3) to direct Cynjen Creations, LLC to remit any and all distributions to which the Debtors may be entitled to Waldemar J. Wojcik, the Trustee herein.

Respectfully submitted,

Waldemar Wojcik Co. L.P.A.

/s/ Waldemar J. Wojcik

WALDEMAR J. WOJCIK,
Attorney for Trustee (0021824)
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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Determine Property of the Estate was served on March 20, 2013 by ordinary U.S. mail, postage prepaid and/or by ECF email upon those parties who receive notice through the Court's electronic noticing system, including upon each of the following:

Thomas S. Avery and Debra A. Avery, Debtors
24567 West Rd.
Olmsted Falls, OH 44138

Cynjen Creations, LLC
Attn: Cynthia D. Laeng and Jennifer M. Laeng
6230 Stumph Rd., Unit 4
Parma Hts., OH 44130

Alan I. Silver, Attorney for Debtors(s) (via ECF Email: silverassoc@ameritech.net)

Office of U.S. Trustee (via ECF email: Registered address @usdoj.gov)

/s/ Waldemar J. Wojcik

WALDEMAR J. WOJCIK,
Attorney for Trustee

CONDITIONAL BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That, TA DA PIZZA, LLC., an Ohio Limited Liability Company, the "GRANTOR" of this Conditional Bill of Sale, for the consideration of Ten Dollars (\$10.00) and other good and valuable consideration received to its full satisfaction from CYNJEN CREATIONS, LLC, the "GRANTEE" herein, does hereby bargain, sell, and convey unto the said GRANTEE, its successors and assigns, subject to the Conditions hereinafter set forth, all of GRANTOR'S right, title, and interest in the following described personal property, to-wit:

All personal property listed in "EXHIBIT A" attached hereto and now located 6230 Stumph Road, Unit 4, Parma Heights, Ohio 44130, and including all right, title, and interest in and to the good will.

Provided that the Conditions hereof are fully and completely satisfied, to have and to hold the same unto the said GRANTEE, its successors and assigns, to it and for its own proper use and benefit forever, so that neither the GRANTOR, nor its successors, nor any other person claiming title under or through the GRANTOR, shall or will hereafter claim or demand any right, in or to the aforesaid personal property, or any part thereof; and that the GRANTOR shall warrant and defend the same against liens and encumbrances of whatever kind and nature whatsoever occurring by reason of or during the period of the aforesaid GRANTOR'S ownership. Provided that the Conditions hereof are fully and completely satisfied, the GRANTOR hereby warrants that it has full ownership of the personal property being conveyed hereunder, and has good right and title to convey same in a manner and form as aforesaid.

The Condition of this Bill of Sale set forth below results from: (i) the GRANTEE and GRANTOR entering into a certain Purchase Agreement for the purchase by GRANTEE of the personal property referred to above and other assets; and (ii) the GRANTEE has delivered unto the GRANTOR a certain Cognovit Promissory Note ("Note") dated as of the date hereof, in the amount of \$40,000.00.

Now, therefore the Condition of this Bill of Sale is such that if the said GRANTEE shall well and truly pay all amounts due and payable under the aforesaid Note to the said GRANTOR, its successor or assigns, and fully performs all obligations to be performed by GRANTEE as the Purchaser under the aforesaid Purchase Agreement, then in such event the Condition of this Bill Of Sale shall be deemed fully satisfied and otherwise null and void, and in such event, title to the subject personal property set forth above shall be free and clear of the Condition set forth herein; however, in the event that the GRANTEE fails to pay all amounts due under the aforesaid Note, and/or fails to fully perform all obligations to be performed by GRANTEE as the Purchaser under the aforesaid Purchase Agreement, then title to the subject personal property set forth above shall remain in the GRANTOR, free and clear of any claim of the GRANTEE.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand, this 12 day of DECEMBER, 2011.

Signed in the presence of:

Brian Clouse
Thomas Avery
STATE OF OHIO)
CUYAHOGA COUNTY) SS:

GRANTOR:
TA DA PIZZA, LLC.

By: Thomas Avery
Thomas Avery, Managing Member

Before me, a Notary Public in and for said County and state, personally appeared the above-named Thomas Avery, individually and as Managing Member of TA DA PIZZA, LLC., the GRANTOR of the foregoing BILL OF SALE, who acknowledged that he did sign the foregoing instrument, and that the same was his free act and deed individually and as such Officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 12 day of DECEMBER, 2011.

Brian Clouse
Notary Public

\$40,000.00

Date DECEMBER 12, 2011
Cleveland, Ohio

COGNOVIT NOTE

FOR VALUE RECEIVED, the undersigned, CYNJEN CREATIONS, LLC., hereby promises to pay to the order of TA DA PIZZA, LLC., the sum of Forty Thousand Dollars (\$40,000.00), upon the following terms and conditions:

1. The monthly payment shall be in the amount of Seven Hundred Forty One Dollars and Eighteen Cents (\$741.18), consisting of principal and interest in an amount equal to four and one-quarter percent (4 1/4%) per annum on the unpaid balance.
2. The monthly payment is due on the fifteenth (15th) day of each month. There shall be a seven-day (7) grace period. Thereafter, there shall be a penalty of Five Percent (5%) of the original full monthly payment or on the part of the monthly payment that is not paid within the seven (7) day grace period provided by the agreement.
3. The repayment shall begin on January 15, 2012, and continue for fifty nine (59) consecutive months thereafter.
4. Default of payment will occur when payment is in arrears thirty days after the payment is due.
5. There shall be no prepayment penalty.

Any attorney at law may appear in any court of record in the United States, and when required by statute in any court of record where I or any one of us then reside or in any County where I or any one of us signed this warrant at any time after the debt hereby evidenced shall become due, either at its stated maturity or by declaration, and waive the issuing and service of process and confess judgment against the maker or makers, jointly and severally, in favor of the holder, for the

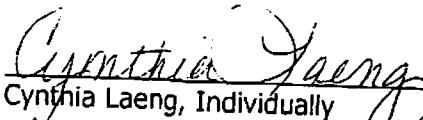
amount then owing hereon, together with the costs of suit, and thereupon, release all errors and waive all rights of appeal.

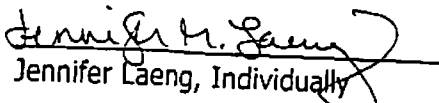
WARNING – BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

CYNJEN CREATIONS, LLC.


Cynthia Laeng, Managing Member

THE UNDERSIGNED DO HEREBY AGREE TO GUARANTY THE PERFORMANCE OF CYNJEN CREATIONS, LLC., UNDER THE TERMS OF THE FOREGOING NOTE.


Cynthia Laeng, Individually


Jennifer Laeng, Individually

LOAN SUMMARY

Principal:	\$40000
Interest Rate:	4.25%
Loan Term:	5 years
Number of Payments:	60
Monthly Payment:	\$741.18
Total Principal Paid:	\$40,000.00
Total Interest Paid:	\$4,470.93
Total Paid:	\$44,470.93